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IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR.

CRIMINAL APPEAL NO./80/2002.

APPELLANT. (IN JAIL) : SHATRUHAN, S/O. Ram Ratan Chandra, Aged about 30 years, Resident of Village: Borasi, P.S. - Jaijaipur, District - Janjgir-Champa (C.G.)

VERSUS

RESPONDENT. : State of Chhattisgarh.

CRIMINAL APPEAL U/S. 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 180/2002

Shatruhan

Vs.

State of Chhattisgarh

Single Bench: Hon'ble Justice Shri Dilip Raosaheb Deshmukh, J.

Shri M.K. Bhaduri, learned counsel for the appellant.

Shri Ashish Shukla, Govt. Advocate/Addl. Public Prosecutor for the State.

ORAL JUDGMENT

(Delivered on 19-01-2006)

1. This appeal is directed against the judgment dated 10.10.2001 delivered by Shri Dilip Bhatt, Special Judge, [Scheduled Castes/Scheduled Tribes, (Prevention of Atrocities) Act] Bilaspur in special criminal case No. 76/2001 whereby the appellant was convicted under Section 376 (1) of I.P.C. and was sentenced to undergo rigorous imprisonment for seven years and a fine of Rs. 1,000/- and in default of payment of fine, to undergo simple imprisonment for two months.

2. The facts of the case lie within a narrow compass. The prosecutrix Ku. Arti, a minor girl aged about 13 years is the daughter of Ramaiya P.W. 2 and Fotobai P.W.3. On 21.12.2000 at about 3.00 p.m., the prosecutrix with her playmates Nawadha, Shravan Kumari and her sister Kalpana had gone to eat berries. After eating berries, they went towards the pond. The prosecutrix called her playmates but, they got separated. Thereafter, the prosecutrix washed herself and came to the bund of the field for returning home. At that time, the accused/appellant came there, caught hold of the

prosecutrix and forcibly took her towards the tank and after gagging her mouth with a piece of cloth and forcibly making the prosecutrix lie down, undressed her and committed rape on her. While the accused/appellant was committing the sexual act, the piece of cloth came out from the mouth of the prosecutrix. At that point of time, she saw one Shankarlal P.W. 4 of the same village near the pond of the field. The prosecutrix shouted. Shankarlal P.W. 4 saw that the accused/appellant after dressing his *'lungi'* ran away. He also saw that the prosecutrix was crying. He also noticed that there were blood stains in the thigh of the prosecutrix as also on her under garments. Rameshwar P.W. 5, a child witness aged about 11 years also happened to reach there and perhaps on being asked by Shankarlal P.W. 4, he ran to the house of the prosecutrix and told her mother that the prosecutrix had fallen from the tree.

3. The prosecutrix accompanied Shankarlal P.W. 4 to her house and informed her mother Fotobai P.W. 2 about the incident of rape by the accused/appellant on her. F.I.R. Ex. P-1 was lodged at 10.20 a.m. on 22.12.2000 in P.S. Jaijaipur situated at a distance of about 12 Kms from village Borsi, the native place of the prosecutrix. The prosecutrix was sent for medical examination. Dr. Mrs. C.K. Singh P.W. 7 examined the prosecutrix at 5.15 p.m. on 22.12.2000 and found that dried blood was present on the medial side of left thigh and also on the right side dribbling downwards. Congestion was noticed over Labia Majora. Separation of thigh was painful. Laceration was present on both sides in Labia Majora with reddishness present. It bleeded on touch. There was a Perineal tear 1.5 cm x ½ cm, with wound gaping, was congested and bleeding on touch. Hymen was torn at 7-5 o'clock position, the size of the tear

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being ½ and ¼ of cm on both sides. It also bleeded on touch. The vagina admitted one finger though it was very painful. Further, internal examination was not possible because of severe pain and tenderness. Dr. Mrs. C.K. Singh P.W. 7 opined that the prosecutrix was subjected to forcible sexual intercourse. In her opinion, the age of the prosecutrix was about 12 to 13 years. She referred her for radiological examination for confirmation of age.

4. Dr. Chatterjee P.W. 8 conducted ossification test on the prosecutrix and found that the Medial epicondyle had not fused (age of fusion being 14 years). Olecrenon of Ulna though appeared had also not fused (age of fusion being 15 years) and the Iliac Creast had also not appeared (age of appearance being 14 years). On the above findings, Dr. Chatterjee P.W. 8 opined that the age of the prosecutrix was 13 years. The accused/appellant was also sent for medical examination though after considerable delay, Dr. Jai Singh P.W. 9 who examined the accused/appellant on 1.5.2001 found that the accused/appellant was fully capable of performing sexual intercourse. After completion of investigation, the accused/appellant was prosecuted under Section 376 (2) (f) of I.P.C. read with Section 3 (2) (5) and Section 3 (1) (11) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989, the prosecutrix being a member of the Scheduled caste.

5. The accused/appellant abjured the guilt and in defence pleaded innocence and false implication due to election rivalry in which he had refused to vote for the father of the prosecutrix and adduced the evidence of one Tarun Kumar D.W. 1. The learned trial Judge relying upon the testimony of the prosecutrix which was duly

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corroborated by medical evidence and also the testimony of Shankarlal P.W. 4 convicted and sentenced the appellant as aforesaid in para 1 under Section 376 (1) of I.P.C. since the age of the prosecutrix was held to be 13 years. The accused/appellant was acquitted of the charge under Sections 3 (2) (v), 3 (1) (xi) of Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. Learned counsel for the appellant has contended that the prosecutrix is a child witness aged about 13 years and since her testimony was not corroborated on material particulars, the learned trial Judge committed an error in convicting the accused/appellant. He also contended that non-examination of the playmates of the prosecutrix i.e. Nawadha, Shravan Kumari & Kalpana who had gone with the prosecutrix to eat berries renders the testimony of the prosecutrix unworthy of credit. He contended that absence of any injuries on the private parts of the accused/appellant creates a strong suspicion about the story of rape with the prosecutrix and placed reliance on ***Shyamlal Mathuralal Vs. Madhya Pradesh*** reported in **M.P.L.J. (Vol.2) Page No. 308.** He argued that the evidence adduced by the accused/appellant in defence read with para 10 of the testimony of Ramaiya P.W. 2 i.e. father of the prosecutrix did not rule out that the accused was falsely implicated. He submitted that the testimony of Rameshwar P.W. 5 who had informed the mother of the prosecutrix that the prosecutrix had a fall from the tree coupled with opinion of Dr. Mrs. C.K. Singh P.W. 7 in para 9 rendered the evidence led by the prosecutrix untrustworthy. Lastly, Shri M.K. Bhaduri, learned counsel for the appellant also contended that the absence of semen or spermatozoa on the skirt and the under garments and slide prepared by Dr. Mrs. C.K.

Singh P.W. 7 creates a serious dent in the prosecution story. On the other hand, Shri Ashish Shukla, learned Govt. Advocate/Addl. Public Prosecutor appearing for the State supported the impugned judgment and contended that the presence of Shankarlal P.W. 4 at the place of occurrence is natural and he saw the accused dressing and running away and also noticed the blood stains on the under garments of the prosecutrix. He argued that the testimony of the prosecutrix is fully corroborated by medical evidence and therefore the conviction on the basis of the testimony of the prosecutrix did not call for any interference. He distinguished the case law cited by the learned counsel for the accused/appellant by contending that in this case, the accused/appellant was examined on 1.5.2001 i.e. after considerable delay which explains absence of any injuries on the private parts of the accused/appellant.

7. Having heard the rival contentions, I have minutely perused the record of the trial Court. In *State of Punjab v. Ramdev Singh* reported **2004(2) C.G.L.J. 66**, the Apex Court held as follows:

> "It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as phychological and emotional. However, if the Court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as under stood in the context of an accomplice would do."

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8. Bearing in mind the principles enunciated by the Apex Court for appreciation of the evidence of the prosecutrix, I shall now proceed to examine the evidence of the prosecutrix.

9. Ku. Arti P.W. 1, deposed that she had gone with her friends to eat berries and after doing so she got separated and went to the tank for having a wash. Thereafter, while she came to the bund of the field, the accused/appellant suddenly caught hold of her and gagged her mouth with a piece of cloth and took her to a nearby place. She further stated that the accused/appellant removed her under garments, made her to lie down and committed rape on her. She further testified that during the sexual act by the accused/appellant, the cloth gagged in her mouth came out and on seeing one Shankarlal P.W. 4 going from nearby she shouted. Thereafter the accused/appellant ran away. She has stated that her clothes had blood stains. Her testimony is fully corroborated by medical evidence of Dr. Mrs. C.K. Singh P.W. 7. The findings of Dr. Mrs. C.K. Singh have been mentioned in para 3 (Supra) which clearly show that the prosecutrix was subjected to forcible sexual intercourse fully corroborates the testimony of the prosecutrix.

10. Shankarlal P.W. 4 has also corroborated the testimony of the prosecutrix. His presence at the scene of occurrence is natural. There is nothing in his cross-examination which would render his testimony doubtful or unworthy of credit. He bore no grudge against the accused and there was no reason for him to falsely implicate the accused/appellant. This witness also saw that the under garments of the prosecutrix had blood stains as also her thighs and she was not in

a position to walk normally. The testimony of Fotobai P.W. 3, the mother of the prosecutrix also shows that immediately after returning from the field with Shankarlal P.W. 4, she told her that the accused/appellant had committed rape on her. So far as the testimony of Rameshwar P.W. 5 is concerned, he merely saw that the prosecutrix was crying and a villager was standing nearby who asked him to inform the mother and thereafter he went to the mother of the prosecutrix and told her that Arti had fallen from the tree. Thus, it was merely conjecture of this witness and not a true statement of fact. The injuries sustained by prosecutrix, on her private parts could not, in any case be caused by a mere fall from a tree. There is also nothing on record to suggest that the prosecutrix had fallen from the true.

11. The medical evidence relating to ossification test also shows that the age of the prosecutrix was approximately 13 years. Even if the legally permissible margin of error on either side is to be considered, there is absolutely no doubt that the prosecutrix was below 16 years of age.

12. So far as the contention of the learned counsel for the appellant regarding the absence of injuries on the private parts of the accused/appellant is concerned, the accused/appellant was medically examined on 1.5.2001. This by itself explains that injuries, if any sustained by the accused/appellant on his penis would have disappeared by then. So far as the testimony of Tarun Kumar D.W. 1 is concerned, he had no personal knowledge about the incident. He admits that he had heard in the village that the prosecutrix was bleeding from private parts. In cross-examination, he has also stated that immediately after the incident, the

accused/appellant had fled from the village. In my considered opinion, the testimony of Tarun Kumar, D.W. 1 is of no assistance to the accused/appellant.

13. So far as the ground of false implication on account of election rivalry is concerned, the defence raised by the accused/appellant is that the father of the prosecutrix wanted the accused/appellant to vote for him, whereas the accused/appellant had refused. Ramaiya P.W. 2, the father of the prosecutrix has in para 9 admitted that the contest in the election was between him and one Itwari. It is highly improbable that merely upon refusal by a person to vote, allegation of rape on the minor daughter would be levelled by any parents.

14. The argument of the learned counsel for the appellant that the absence of semen and spermatozoa on the skirt, underwear and slide of the prosecutrix renders her testimony unreliable, can also not be accepted. The evidence led clearly shows that the prosecutrix had shouted when she saw shankarlal P.W. 4 near the place of the incident and on seeing Shankarlal P.W. 4, the accused got up, dressed and fled away. This clearly shows that ejaculation might not have taken place till that time which explains the absence of semen and spermatozoa on the skirt, underwear and slide of the prosecutrix. Even otherwise for proving the offence of rape under Section 376 (1) of I.P.C. proof of penetration is itself sufficient. Thus, this contention of the defence also fails.

15. Lastly, the non-examination of Nawadha, Shrawan Kumari and Kalpana, minor playmates of the prosecutrix does not help the accused/appellant in any manner as these girls were not present at the place where the incident took place.

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16. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that the conviction of the accused/appellant under Section 376 (1) of I.P.C. (the prosecutrix being aged about 18 years) is well founded and does not call for any interference. So far as the sentence imposed upon the accused/appellant is concerned, in a tradition bound and conservative society, more particularly in a rural area, the shame of sexual assault on a girl of about 14 years cannot be lost sight of. The minimum sentence imposed on the accused/appellant, therefore, does not call for any interference.

17. The appeal being devoid of merit is dismissed.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Priya